



The Solutions Network

Rochester, New York

A-76

Competitive Sourcing

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A-76: The Tough Questions



- **DOD's Transition to New Rules**
 - *What is the plan?*
- **Post Award Accountability Requirements**
 - *Has anyone thought about how this works?*
- **Follow-on Competition for MEOs**
 - *Should OFPP drop the requirement?*
- **Protest Rights for MEO**
 - *What should good legislation look like?*
- **Proposed New A-76 Legislation**
 - *How would DOD implement these provisions*
- **Private Sector Competition**
 - *Is it adequate?*

A-76: DOD's Transition to the New Rules



- DOD granted exemptions to keep many competitions under old rules
- Recent delegation of authority letter
- Plan to conduct a small number (10-12) of studies under new rules this year
- Still plan to compete thousands of commercial FTEs over next several years

A-76: Post Award Accountability Requirements



Regardless of the selected service provider, an agency shall:

- 1. Monitor performance**
- 2. Implement the QA plan**
- 3. Retain solicitation documentation**
- 4. Maintain currency of the contract file and letters of obligation**
- 5. Record the actual cost of performance**
- 6. Monitor, collect and report performance information”**

(Attachment B, Section E, Paragraph 4)

A-76: MEO Protest Rights



- Recommended by GAO Commercial Activities Panel
- Revised Circular treats MEO like a bidder
- GAO recently concluded that the MEO does not have protest rights under new rules
 - Not an interested party under CICA
 - No economic interest
- “Punted” the issue to Congress
 - Amend CICA
- Currently all bidders do not automatically qualify as an “Interested Party”

A-76: Follow-on Competition for MEO



- **Agencies shall complete another competition of the activity by the end of the last performance period (unless a specific exemption is granted). Attachment B Section E, Paragraph 5b.**
- **OFPP nominee David Safavian indicated he would not object to removing the re-competition provision**

A-76: New Legislation?



- **Defense Bill provisions to be worked out in Conference Committee**
 - **Protest rights to MEO**
 - **Requirement that private sector bidders gets no competitive advantage on health care benefits**
 - **A pilot project to all DoD employees to compete against contractors**
- **Various appropriation bill provisions**

A-76: Adequate Competition?



- Will the revised Circular increase private sector competition?
- Many companies refuse to bid A-76
- An 11% win rate is not encouraging
- Problems the Circular cannot fix
 - Poorly drafted SOW or PWS
 - Insufficient workload data

Top Ten Ways to Discourage the Private Sector from Bidding



1. During oral presentations, don't ask any questions
2. Stack the SSB with people whose jobs are at stake
3. Make sure the base commander or agency director announces to the workforce that "We will win"
4. Require a 40% or more subcontracting requirement for SB, SDB, WO, HBCU
5. Require bidders to specifically identify key personnel, then delay the award decision for several months
6. Put all financial risk of the project on the private sector
7. Provide sketchy, incomplete or innacurate workload data, cost information, and facility diagrams
8. On Industry Day, don't let the industry bidders off the bus
9. Change the release date of the RFP at least 3 times
10. Don't bother to issue draft RFPs